



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

California State Office
2800 Cottage Way, Suite W1834
Sacramento, CA 95825
www.ca.blm.gov

MAR 02 2009

In Reply Refer To:

4100(P)
(CA690.26)

**CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED**

NOTICE OF STATE DIRECTOR'S PROPOSED GRAZING DECISION AND VACATING THE MARCH 10, 2006 FIELD MANAGER'S PROPOSED GRAZING DECISION

The Conservation Fund
c/o Alan Beezley
1327 Spruce Street, Suite 302
Boulder, CO. 80302

Dear Mr. Beezley:

INTRODUCTION

The Valley Wells Allotment, #9009, is currently a perennial allotment with potential forage production to enable the Bureau of Land Management (BLM) to authorize an established perennial forage allocation. The allotment consists of 193,658 acres of BLM administered lands, including 114,060 acres of the Shadow Valley Desert Wildlife Management Area (DWMA). The allotment is located within the planning area of the *Northern and Eastern Mojave* (NEMO) plan amendment.

On March 10, 2006, BLM issued a proposed grazing decision to authorize livestock grazing on the Valley Wells Allotment. However, on July 18, 2008, BLM received a request from you to relinquish your grazing preference for the Valley Wells Allotment. As a result, BLM embarked on site-specific analysis to amend the CDCA Plan to make the entire Valley Wells Allotment unavailable for grazing.

BACKGROUND

Since Federal listing of the Mojave population of the desert tortoise as a threatened species under the Endangered Species Act (ESA) in 1989, cattle grazing in desert tortoise habitat has been in accordance with biological opinions issued by the US Fish and Wildlife Service (FWS).

On August 3, 2004, the *Biological Opinion for the California Desert Conservation Area (CDCA) Plan [Desert Tortoise]* (1-8-01-F-16) dated June 17, 2002 which authorized NEMO plan amendment actions in desert tortoise habitat was vacated and remanded back to the FWS by the US Court of Appeals for the 9th Circuit. This court order postponed the completion of a fully processed grazing lease. On March 31, 2005, a new biological opinion (BO) was issued, (*Biological Opinion for the CDCA Plan [Desert Tortoise]* (1-8-04-F-034), authorizing the implementation of the NEMO plan amendment, at which time the Needles Field Office (NFO) resumed fully processing your grazing lease. However, on July 18, 2008, BLM received a request from you to relinquish your grazing preference for the Valley Wells Allotment. As a result, BLM embarked on site-specific analysis to amend the CDCA Plan to make the entire Valley Wells Allotment unavailable for grazing.

The December 20, 2002 NEMO plan amendment Record of Decision did not allow for removal of grazing from the Valley Wells Allotment. Accordingly, the BLM analyzed and approved the *Amendment to the California Desert Conservation Area Plan to Devote the Valley Wells Allotment to a Public Purpose Which Precludes Livestock Grazing* (March 2, 2009).

Consultation, Cooperation and Coordination

As required under 43 Code of Federal Regulations (CFR) 4120.2(4)(c) and 4130.2(b) BLM has provided an opportunity for public participation. The BLM has consulted, cooperated and coordinated (CCC) with the interested public and the State of California.

BLM consulted with a number of agencies and tribes in relation to the plan amendment and proposed action including the California State Lands Commission and California Department of Fish and Game. Local agencies and organizations consulted included the San Bernardino County Board of Supervisors and Land Use Services Department, Advanced Planning and the Desert District Grazing Board. BLM also conducted government-to-government consultation with the Fort Mojave, Chemehuevi, Colorado River, Las Vegas Band of Paiutes and the Pahrump Paiute Indian Tribes.

A Notice of Intent (NOI) to amend the CDCA Plan was published in the Federal Register October 1, 2008. Three respondents provided comments during the 30-day NOI scoping period. One commenter requested information on the wildlife and water sources that would be affected, which was provided. One commenter requested BLM's consideration of continued motorized access to the portions of the allotment that are outside of wilderness. Finally, one commenter opposed removal of water sources relied upon by wildlife. Both motorized vehicle access and water sources are unaffected by the plan amendment/project.

The draft plan amendment was posted on the Needles Field Office web site and sent to interested publics for a 30-day public comment period that ended December 17, 2008. Five comments were received. Three comments were from environmental groups and one from an individual, all of which expressed support for the proposed action. Another

respondent requested information regarding eventual disposition of the allotment's water sources, a subject outside the scope of the project.

The proposed plan amendment, EA and associated FONSI were posted on the Needles Field Office web site and sent to interested publics for a 30-day protest period which ended February 17, 2009. No protests were received.

STATE DIRECTOR'S PROPOSED DECISION

In accordance with the associated *Amendment to the California Desert Conservation Area Plan to Devote the Valley Wells Allotment to a Public Purpose Which Precludes Livestock Grazing*, it is my decision that the Valley Wells Allotment will no longer be available for livestock grazing and that the allotment's forage will be allocated to wildlife use, specifically to the threatened desert tortoise. No further grazing applications for the Valley Wells Allotment (or any portion) will be accepted or considered. The allotment will be unavailable for livestock grazing, the designation will be removed from the CDCA Plan and all private interest in range improvements on public lands in the allotment is assumed by the BLM.

It is also my decision to vacate the March 10, 2006 proposed grazing decision to issue the grazing lease for the Valley Wells Allotment for a term of ten years.

RATIONALE

Allocating the allotment's forage to wildlife use is needed to support recovery of the federally threatened desert tortoise. Approximately half of the allotment is within the Shadow Valley Desert Wildlife Management Area (DWMA). Most, but not all, of the DWMA contains desert tortoise critical habitat. Additionally, removing cattle from the Valley Wells Allotment is consistent with the NEMO plan amendment prescription removing the other introduced grazing species, burros, from the allotment. Further benefits to the BLM sensitive Rusby's desert mallow (*Sphaeralcea rusbyi* ssp. *eremícola*) and the Mojave fringe-toed lizard (*Uma scoparia*) will also be realized by removal of cattle grazing from the species' habitats.

AUTHORITY

Statutory and regulatory authorities for this decision are in the Taylor Grazing Act as amended, the Federal Land Policy and Management Act of 1976, and 43 CFR 4100:

43 CFR 4120.2(4)(c): "The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part."

43 CFR 4130.2(b): "The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, the State having lands or

responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

43 CFR 4130.3-1(b): "All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or any of the terms and conditions of the permit or lease."

43 CFR 4100.0-8: The authorized officer shall manage cattle grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans.

16 U.S.C. 1536(a)(1): "...All other Federal Agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered and threatened species listed pursuant to section 1533 of this title."

16 U.S.C. 1536(a)(2): "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined ... to be critical.... In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available."

RIGHT TO PROTEST/APPEAL

Any applicant, permittee, lessee or other affected interest may protest a proposed decision under 43 CFR 4160.1, in person or in writing to the California State Director, 2800 Cottage Way, Ste W-1834, Sacramento, California 95825-1886, within 15 days after receipt of such decision. The protest should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

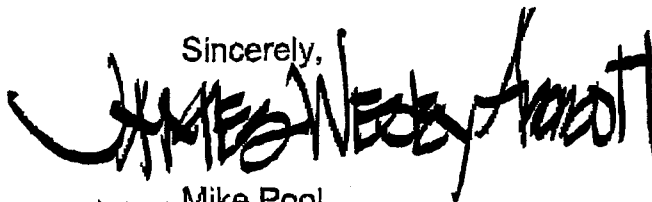
Any applicant, permittee, lessee or other person whose interest is adversely affected by the Final Decision may file an appeal in accordance with 43 CFR 4.470 and subpart 4160.1-4. The appeal may be accompanied by a petition for stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

The appeal shall state the reason, clearly and concisely, why the appellant thinks the final decision is in error and otherwise comply with the provisions of 43 CFR 4.470 which is available from the BLM office for your use in a BLM office.

In accordance with 43 CFR 4.21(b) (1), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) the likelihood of the appellant's success on the merits;
- (3) the likelihood of immediate and irreparable harm if the stay is not granted;
- (4) whether the public interest favors granting the stay.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "MIKE POOL".

Mike Pool

California State Director

A small, stylized handwritten mark or signature in black ink, possibly initials.

cc: Steven Borchard, Desert District Manager
Members of Interested Public

DECISION RECORD

Amendment to the California Desert Conservation Area Plan
to Devote the Valley Wells Allotment to a Public Purpose
Which Precludes Livestock Grazing


Mike Pool
#102 California State Director
Bureau of Land Management

Needles Field Office
Environmental Assessment CA-690-EA09-01

I. Summary

This document includes the Bureau of Land Management's decision and supporting documentation for the *Amendment to the California Desert Conservation Area Plan to Devote the Valley Wells Allotment to a Public Purpose Which Precludes Livestock Grazing* based on the attendant environmental assessment (EA), interagency coordination, and finding of no significant impact. Included in this decision record are the following components: the decision, a summary of the alternatives considered, a section on management considerations which discusses the rationale for the decision, and a section describing public involvement.

The Valley Wells Allotment has not been grazed by livestock since the 2003-2004 grazing period, when the current lease holder acquired the lease. A five-year term grazing permit was issued to a previous lessee in 1999. In 2003, BLM issued a Final Grazing Decision to the current lessee implementing the prescriptions in the Northern and Eastern Mojave (NEMO) plan amendment. The base property associated with the Valley Wells Allotment was sold in February 2004. In May 2007 the current lessee submitted a request for relinquishment of grazing preference and requested that the entire allotment be retired. An EA entitled Valley Wells Allotment Grazing Relinquishment for Habitat Conservation CA-690-EA08-28 (July 2008) addressing this request generated public support for discontinuing cattle grazing throughout the allotment. Based upon close review of the NEMO Plan amendment and following further analysis of the proposed action and its alternatives, BLM issued a revised EA and proposed CDCA plan amendment for a 30-day comment period on November 17, 2008.

The purpose of the plan amendment is to make the allotment unavailable for livestock grazing and to allocate forage for wildlife use [(43 Code of Federal Regulations 4110.4-2(b))]. This requires an amendment to the California Desert Conservation Area (CDCA) Plan.

The proposed action is needed to support recovery of the federally threatened desert tortoise. Approximately half of the allotment is within the Shadow Valley Desert Wildlife Management Area (DWMA). Most, but not all, of the DWMA contains desert tortoise critical habitat. Additionally, removing cattle from the Valley Wells allotment is consistent with the NEMO plan amendment prescription removing the other introduced grazing species, burros, from the allotment. Further benefits to the BLM sensitive Rusby's desert mallow (*Sphaeralcea rusbyi* ssp. *eremicola*) and the Mojave fringe-toed lizard (*Uma scoparia*) would also be realized by removal of cattle grazing from the species' habitats.

II. Decision

The decision is hereby made to approve the amendment to the California Desert Conservation Area (CDCA) Plan devoting the Valley Wells Allotment to a public purpose which precludes livestock grazing and allocating its forage for wildlife use, specifically to

the threatened desert tortoise. The plan amendment was prepared in accordance with the Federal Land Policy and Management Act of 1976 [43 CFR 1600]. An EA was prepared for this plan amendment in compliance with the National Environmental Policy Act of 1969.

III. Alternatives Considered

The alternatives considered in detail in the plan amendment include the Proposed Action (which is the proposed plan amendment), the No DWMA Grazing Alternative and the No Action Alternative.

The Proposed Action would amend the CDCA Plan to withdraw livestock grazing from the entire Valley Wells Allotment and to allocate its forage for wildlife use.

The No DWMA Grazing Alternative would amend the CDCA Plan to allow grazing of the non-DWMA portion of the allotment by a qualified applicant while making the DWMA portion of the allotment unavailable for grazing. If grazing were to occur on the non-DWMA lands, it would be administered in conformance with the NEMO plan amendment. The portion of the Valley Wells allotment outside the Shadow Valley DWMA would conform to the management strategies necessary to maintain or achieve rangeland health standards.

The No Action Alternative would maintain the allotment as available for grazing under the terms and conditions in the NEMO plan amendment. An allotment management plan would be written prescribing grazing management. This alternative was considered as not meeting the purpose and need for action.

IV. Management Considerations

Based on review of the EA, including scoping comments, potential impacts, comments on the EA, and coordination and input received from other agencies, the BLM determined in its January 13, 2009 Finding of No Significant Impact (FONSI) that the plan amendment is not a major Federal action and will not significantly affect the quality of the human environment, individually or cumulatively with actions in the general area. No environmental effects meet the definition of significance in context or intensity as defined in 40 CFR 1508.27.

Land use plan decisions that permit livestock grazing on public lands are not permanent and may be revised at any time through the plan amendment or revision process.

V. Public Involvement

The Council on Environmental Quality regulations (40 CFR 1501.7) and BLM planning regulations (43 CFR 1610) require an early and open process (scoping) for determining the planning issues. The regulations also require that agencies provide opportunities for public involvement in the planning process, including review of the planning criteria.

A Notice of Intent (NOI) to amend the CDCA Plan was published in the Federal Register October 1, 2008. Three respondents provided comments during that 30-day scoping period. One commenter requested information on the wildlife and water sources that would be affected, which was provided. One commenter requested BLM's consideration of continued motorized access to the portions of the allotment that are outside of wilderness. And, one commenter opposed removal of water sources relied upon by wildlife. Both motorized vehicle access and water sources are unaffected by the project.

A draft plan amendment was posted on the Needles Field Office web site and sent to interested publics for a 30-day public comment period that ended December 17, 2008. Five comments were received. Three comments were from environmental groups and one from an individual, all of which expressed support for the proposed action. An additional respondent requested information regarding eventual disposition of the allotment's water sources, a subject outside the scope of this project.

The proposed plan amendment, EA and associated FONSI were posted on the Needles Field Office web site and sent to interested publics for a 30-day protest period which ended February 17, 2009. No protests were received.

A. Agency and Local Coordination

BLM consulted with a number of agencies and tribes in relation to the plan amendment. Consulted state agencies included the California State Lands Commission and California Department of Fish and Game. Local agencies and organizations consulted included the San Bernardino County Board of Supervisors and Land Use Services Department, Advanced Planning, and the Desert District Grazing Board. BLM also conducted government-to-government consultation with the Fort Mojave, Chemehuevi, Colorado River, Las Vegas Band of Paiutes and the Pahrump Paiute Indian tribes.

B. Consistency Review

In accordance with BLM planning regulations (43 CFR 1610.3-2) BLM must identify any known inconsistencies with state or local plans, policies, or programs. Accordingly, the BLM provided the Governor with up to 60 days in which to identify any inconsistencies and submit recommendations. In response, the State of California Governor's Office of Planning and Research determined in its February 11, 2009 correspondence that the BLM's proposal to devote the Valley Wells Allotment to a public purpose which precludes livestock grazing is not inconsistent with any state or local, plans, policies, or programs.